

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1550

ADOPTION OF ROMAN (and three companion cases¹).

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The father appeals from decrees entered in the Juvenile Court terminating his parental rights to his four children and denying his request for court-ordered posttermination and postadoption visitation. On appeal, he contends that the order denying visitation must be vacated, and the case should be remanded to the Juvenile Court for consideration of and findings on posttermination and postadoption visitation for all four children. We affirm.

1. Background. The mother and father married in 2008 after dating for three weeks. Their four children were born in 2008, 2010, 2012, and 2014.² The father has six other children: two that live in Portugal; two that live with his former wife in Cape Verde; and two with his current girlfriend "that are

¹ Adoption of Jill, Adoption of Ross, and Adoption of Mark. The children's names are pseudonyms.

² The mother also has an older child with a different father.

currently the subject of another open [Department of Children and Families (DCF)] case."

The initial care and protection petition for this case was filed by DCF in October 2014, alleging neglect. The family had been evicted from their apartment in September 2014, and "had been bouncing from home to home." Both the mother and the father declined the opportunity to seek and obtain a shelter placement, and thus DCF conducted an emergency removal of the subject children.³

In January 2015, the father received conditional custody of the children. On July 2, 2015, a G. L. c. 119, § 51A, report was filed alleging neglect of the children by the father for "[leaving] the children with an inappropriate and unapproved caretaker who did not provide proper supervision of the children." In August of 2016, the father was again evicted from his apartment and moved in with his sister with three of the children. Without informing DCF, the father sent one of the children at issue here to live with the mother in Rhode Island.⁴ As a result, the children were again placed into DCF care.

³ "At the time of removal the children smelled of urine and appeared unkempt." Two of the children had feces in their diapers.

⁴ The father was aware of DCF's concerns about the mother and knew that she was not an appropriate or approved caretaker at the time that he sent the child to live with her.

While the children were back in DCF care, the father struggled to comply with services offered to him. He was also "not consistent with visiting and contacting the children." The father also has mental health issues, but has not engaged in services to address them. Since November of 2016, the father only attended five visits with the children.⁵ He "has struggled to maintain regular contact with the children and doesn't reach out to [DCF] to inquire how the children are doing in school." The father has also endured serious medical complications during the care and protection proceedings. That notwithstanding, he has been unable to provide the children with a stable home environment. To the contrary, the children have been subjected to a "cycle of homelessness and instability" in the four years leading up to the trial in this matter.

On April 23, 2018, trial commenced on DCF's request to terminate the father's parental rights. The father did not appear at trial.⁶ On April 25, 2018, decrees entered terminating the father's parental rights, and the father filed a timely notice of appeal. On August 15, 2018, the judge issued her findings of fact and conclusions of law.

⁵ To the extent that the father did attend visits, he was observed to be loving and affectionate with the children.

⁶ At the outset of trial, the judge noted the father's absence and found that the father had "failed to avail himself of all of [his trial attorney's] efforts to include [the] [f]ather in this case."

2. Discussion. The father contends that the judge's findings did not support her conclusion that court-ordered posttermination and postadoption visitation was not in the best interests of the children.⁷ We review the father's claims to determine whether the trial judge abused her discretion. Adoption of John, 53 Mass. App. Ct. 431, 439 (2001). An abuse of discretion exists where the reviewing court determines that "the judge made a clear error of judgment in weighing the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives" (quotation omitted). L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014). In the context of deciding whether to order posttermination visitation, a judge's discretion must be grounded in the best interests of the child, "based on emotional bonding and other circumstances of the actual personal relationship of the child and the biological parent, not in the rights of the biological parent nor the legal consequences of their natural relation." Adoption of Terrence, 57 Mass. App. Ct. 832, 839 (2003), quoting Adoption of Vito, 431 Mass. 550, 562 (2000).

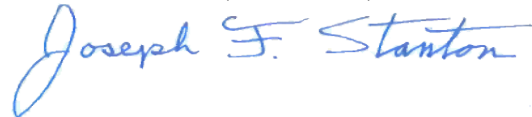
In the present case, the judge did not abuse her discretion. The record reflects the father's unwillingness or inability to comply with DCF's service plans, inconsistent and

⁷ The father does not challenge the determination of unfitness or the decrees terminating his parental rights.

sparse visitation, and lack of "significant, existing bonds" with the children. Adoption of Vito, 431 Mass. at 563. There was a dearth of evidence demonstrating any emotional bonding between the father and the children.⁸ Absent any such evidence, and in view of the judge's comprehensive subsidiary findings, we cannot say that the judge abused her discretion in declining to mandate court-ordered posttermination and postadoption visitation.⁹ See L.L., 470 Mass. at 185 n.27.

Decrees affirmed.

By the Court (Neyman, Sacks &
Wendlandt, JJ.¹⁰),



Clerk

Entered: June 21, 2019.

⁸ We note that the judge did not preclude posttermination and postadoption visitation, but left such visits "to the discretion of [DCF] and/or adoptive parents/guardians."

⁹ We note that further explicit findings delineating why court-ordered visitation would not be in the children's best interests would have been helpful and appropriate in the present case. That notwithstanding, we agree with DCF's position that a fair reading of the record reveals that the judge "considered significant evidence indicating that posttermination visitation orders would not further the children's best interests [and the] trial court's ultimate determination in this regard is implicit in these findings."

¹⁰ The panelists are listed in order of seniority.